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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,	)	
W.A. DREW EDMONDSON, in his	)	
capacity as ATTORNEY GENERAL	)	
OF THE STATE OF OKLAHOMA,	)	
et al.	)	
	)	
Plaintiffs,	)	
	)	
V.	)	No. 05-CV-329-GKF-SAJ
	)	
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
FEBRUARY 19, 2008  
PRELIMINARY INJUNCTION HEARING  
VOLUME I

BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

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1 MR. BULLOCK: We're prepared to start opening  
2 statement. General Edmondson will deliver for the plaintiff.

3 THE COURT: Very well. General, I've read the briefs,  
4 so you needn't go through all of the legal issues, but you  
5 certainly may make an opening statement, sir.

6 MR. EDMONDSON: Thank you, Your Honor. May it please  
7 the Court, last Friday's Tulsa World quoted a spokesperson for  
8 the Poultry Community Council Group, not unknown to the  
9 defendants in this suit, as saying that Edmondson admits he  
10 lacks evidence that poultry farmers have violated the laws or  
11 caused pollution. If that were true, this hearing would be  
12 very short indeed, but I think it's very apparent from spending  
13 an hour on pretrial motions that this is not going to be a  
14 short hearing.

15 On the contrary, our evidence over the next several  
16 days will be that these defendants are and have been in  
17 violation of federal law limiting the disposal of waste. Our  
18 evidence will show that these defendants are and have been in  
19 violation of black letter Oklahoma statutes providing that  
20 land-applied poultry waste shall not enter the waters of the  
21 state. Our evidence will show that these defendants are and  
22 have been in violation of black letter federal and Oklahoma law  
23 prohibiting pollution and contamination of ground and surface  
24 waters. Our evidence will show that these defendants are and  
25 have been in violation of regulations requiring that surface

1 application of poultry waste be limited to the needs of the  
2 crops. Most importantly for the purpose of this hearing, our  
3 evidence will show that these persistent and pervasive  
4 violations of state and federal law have infested the rivers  
5 and springs and wells of the Illinois River Watershed with  
6 biologic pathogens that have created an imminent and  
7 substantial threat to human health.

8           Three years ago, Your Honor, the State of Oklahoma  
9 filed suit against these defendants alleging environmental  
10 damage to the Illinois River watershed due to the excessive  
11 surface application of poultry waste. This waste, consisting  
12 of fecal matter, bedding and water, contains, among other  
13 things, nitrogen and phosphorus and is an effective fertilizer  
14 when properly used. We alleged then and still maintain that  
15 the litter is being applied well in excess of the agronomic  
16 needs of crops and that the resulting runoff from fields has  
17 damaged the waters of the basin, including Lake Tenkiller.

18           Trial of the case-in-chief is scheduled next year.  
19 However, in the course of preparation for that trial, we began  
20 to develop data concerning the effects of this dumping on human  
21 health. We feel that data is compelling and because of the  
22 human health implications, it could not wait until next year.  
23 We, therefore, are seeking this injunction. The legal  
24 framework for this hearing is not complicated. It includes the  
25 elements for the issuance of a preliminary injunction, the

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 2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

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 10 Defendants. )

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 13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 FEBRUARY 20, 2008

15 PRELIMINARY INJUNCTION HEARING

16 VOLUME II

17  
 18 BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

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JOHN BERTON FISHER



RECROSS-EXAMINATION

BY MR. GEORGE

Q. Dr. Engel, have you ever spoken with anyone at George's as to why they might be moving poultry litter to the Delta?

A. I have not.

Q. Were you just speculating about why, one possible reason as to why that might be occurring?

A. Well, certainly the literature would all seem to indicate that, you know, you lose the economic value after you transport this more than a few tens of miles, including the Rausser-Dicks materials that you provided.

Q. You have no idea why they transferred it to the Delta, do you?

A. Well, most likely it's either because --

Q. Sir, do you know why they transferred it to the Delta?

A. I don't know exactly why George's does that.

MR. GEORGE: Okay, thank you.

THE COURT: You may step down. The plaintiff may call its next witness.

MR. NANCE: Your Honor, State would call Dr. Gordon Johnson.

GORDON VERNON JOHNSON

Called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

THE COURT: State your full name for the record,

1 conclusions.

2 A. Okay.

3 Q. The last sentence. These scientists, Dr. Sharpley  
4 concluded -- it starts with applications. "Application of  
5 litter based on the P index allows more management options --"

6 A. Just a minute now, where are you at?

7 Q. You can see it on the screen, she's blown it up for you.

8 A. I was trying to find it here.

9 Q. Do you see where it is on the screen, Dr. Johnson?

10 A. Yeah, I see it.

11 Q. Dr. Sharpley and others say, "Application of litter based  
12 on the phosphorus index allows more management options than  
13 applications based on a soil test P threshold. These studies  
14 have provided evidence that the phosphorus index provides a  
15 better assessment of phosphorus runoff than Mehlich III soil  
16 test P, especially when litter P is added. That's what it  
17 says, doesn't it?

18 A. Yes, and I agree wholeheartedly.

19 Q. All right, thank you. Now, in fact, Dr. Johnson, you  
20 don't even believe poultry litter is a fertilizer. Isn't that  
21 what I heard you say?

22 A. I said it's not a very good fertilizer, yes.

23 Q. Not a very good fertilizer?

24 A. No.

25 Q. But it is a fertilizer?

1 A. Well, it's a source of nutrients.

2 Q. Yes or no, it is a fertilizer?

3 A. And you could call it a fertilizer. It is not registered  
4 as a fertilizer.

5 Q. And part of your affidavit, part of what Mr. Nance asked  
6 you, you have the opinion that it doesn't qualify as a soil  
7 amendment?

8 A. That's true.

9 Q. Let's look at Exhibit 18. This is OSU Production  
10 Technology Publication PT 98.7. Do you see that?

11 A. I'm looking for it.

12 Q. It's on the screen, but I'll be glad to help you find it.  
13 Who wrote this?

14 A. Yes.

15 Q. Who wrote this?

16 A. Dr. Hailin Zhang.

17 Q. Who is he?

18 A. He's the current extension soil nutrient management state  
19 specialist for soil nutrients.

20 Q. He is the nutrient management specialist for the State of  
21 Oklahoma?

22 A. That he is.

23 Q. Would you read aloud the first paragraph?

24 A. "Most people recognize the value of animal waste as a  
25 plant nutrient source or soil amendment but the potential of

1 business. To the extent that they do close, the date of  
2 closing always seems to be somewhere over the horizon. So  
3 until it happens, we're not sure that it's going to happen.

4 THE COURT: Okay. Well, that's enough. We've spent  
5 enough time on that, but I wanted to clarify my position. I  
6 misunderstood that they didn't -- that they had operations in  
7 Arkansas.

8 MR. JORGENSEN: Thank you, Your Honor. And may I  
9 speak just briefly on this issue of person which just came up?

10 THE COURT: Yes, sir.

11 MR. JORGENSEN: I'd like to point out for the Court  
12 those who are not identified as persons, not a single grower,  
13 not a single person who uses litter, not a single rancher.

14 THE COURT: Of course, that's why we are addressing  
15 the agency issue here.

16 MR. JORGENSEN: Right.

17 THE COURT: All right. Dr. Johnson, thank you, sir,  
18 you may step down. And the plaintiff may call its next  
19 witness.

20 MR. LENNINGTON: Assistant Attorney General Daniel  
21 Lennington will call Dr. Lowell Caneday.

22 LOWELL MARK CANEDAY

23 Called as a witness on behalf of the plaintiffs, being first  
24 duly sworn, testified as follows:

25 THE COURT: State your full name for the record,

1 has observed a runoff event and he would like to put that in  
2 his own words as someone who is not a scientist but who can  
3 definitely explain to you what he has observed firsthand as a  
4 fact witness.

5 MR. MCDANIEL: Your Honor, it wasn't disclosed. We  
6 took his deposition and this is a matter of science. A  
7 non-technical person cannot just look and draw conclusions that  
8 ought to be offered to this Court. I think it's improper  
9 testimony. He's obviously here as a recreational expert, and  
10 this is widely divergent from the reasons for which he was  
11 offered.

12 THE COURT: How does this witness intend to identify  
13 what he saw as chicken litter runoff?

14 MR. LENNINGTON: I can ask him that question and lay  
15 the foundation for this factual experience. And he can  
16 describe what he saw just with his own eyes and how he knew it  
17 was chicken litter.

18 THE COURT: Go ahead.

19 A. My wife and I were driving on a Saturday afternoon in a  
20 rain event in September on Chewy Road. We were heading west.  
21 I was about to turn to the north going up to Paddle Trails  
22 Camp. And it looked as though the field was literally moving  
23 across the road in front of me as the float materials of the  
24 litter floated on the rain --

25 MR. MCDANIEL: Objection, Your Honor. There's been no

1 foundation that what was moving was litter.

2 THE COURT: Correct, this is not laying a foundation,  
3 Counsel.

4 Q. (By Mr. Lennington) Dr. Caneday, how did you know that  
5 this was poultry litter, couldn't it have been something else?

6 A. There were probably two good indicators to me that it was  
7 poultry litter. One, I actually did see on that occasion  
8 feathers in the litter but the odor is unmistakable. It  
9 brought back lots of memories. But I've smelled it on numerous  
10 other occasions as well, that just happened to be one.

11 Q. Where was this substance moving towards?

12 A. We were heading west. It was coming from my right and  
13 moving down the hillside toward the river on Chewy Road right  
14 down the roadway.

15 Q. What direction is that?

16 A. That is going to the west in that area.

17 Q. Is that towards the Illinois River?

18 A. It's toward the Illinois River.

19 Q. How many miles were you from the river at this point?

20 A. I would say two miles because I was going to turn to the  
21 north and that's a little bit closer to the river.

22 Q. Did you say this was the Saturday after Labor Day?

23 A. The Saturday after Labor Day. I believe it was September  
24 9.

25 Q. Is the Labor Day time period a common time to float the

1 THE COURT: Cross-examination.

2 MR. MCDANIEL: May I approach the witness, Your Honor?

3 THE COURT: You may.

4 MR. MCDANIEL: Scott McDaniel for Peterson Farms.

5 CROSS-EXAMINATION

6 BY MR. MCDANIEL:

7 Q. Good morning, Dr. Caneday. How are you?

8 A. Good morning.

9 Q. This runoff that you testified about just a few moments  
10 ago where you saw it, it was two miles from the river?

11 A. Approximately, yes.

12 Q. Did you follow that runoff all the way to the river and  
13 see it go in the river?

14 A. I did not.

15 Q. And you don't have any basis for testifying to this Court  
16 what, if anything, may have been in that water that was running  
17 off you saw; right?

18 A. It was -- all I could say is it was litter, some straw,  
19 some variety of other items and some feathers that were  
20 identifiable, but I don't know what was in there.

21 Q. You sure wouldn't know how long that litter may have been  
22 laying on that field?

23 A. That I do not know.

24 Q. And you certainly can't offer an opinion as to whether  
25 that water contained any viable bacteria from poultry litter;

1 right?

2 A. I do not know that.

3 Q. There was a filing yesterday, Docket No. 1589, by a couple  
4 of people, a Stubblefield and a Randall. And there was a  
5 statement I'd like to bounce off you and get your reaction to.  
6 The statement is that "While the topography of the lands  
7 adjacent to the Illinois River in Oklahoma create an illusion  
8 of a wilderness area for visitors, in reality Oklahoma's most  
9 publicized scenic stream winds its way through the shadows of a  
10 growing suburban and semi-metropolitan zone." Do you agree  
11 with that?

12 A. I disagree with the use of the word wilderness. I don't  
13 even think it gives the illusion of wilderness. It gives the  
14 illusion of being a roaded rural countryside is the way I would  
15 say it. But it is not -- it's a populated area.

16 Q. Right. So this statement that it winds its way through  
17 shadows of a growing suburban and semi-metropolitan zone, you  
18 don't really take issue with that, sir?

19 A. Not with that part.

20 Q. Now, the calculations you recited in your affidavit -- by  
21 the way, do you have a copy of your affidavit in front of you,  
22 sir?

23 A. I do not.

24 MR. MCDANIEL: May I approach the witness?

25 THE COURT: You may, sir.



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Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MARCH 10, 2008

PRELIMINARY INJUNCTION HEARING

VOLUME VII

BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

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Glen R. Dorrough  
UNITED STATES COURT REPORTER

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Page No.

WITNESSES CALLED ON BEHALF OF DEFENDANTS:

PETER JAFFE

Direct Examination by Mr. McDaniel..... 1704

1 MR. LENNINGTON: No, it was something I came across in  
2 my preparation for Dr. Jaffe.

3 THE COURT: All right. Well, it's really not part of  
4 this stipulation. I don't believe he had ever seen it;  
5 correct? It wasn't part of his considered materials?

6 MR. MCDANIEL: That's my understanding.

7 THE COURT: No, we'll decline to admit 480. It's new  
8 material, not subject to the stipulation. Mr. McDaniel.

9 MR. MCDANIEL: Your Honor, with the consent of  
10 plaintiffs' counsel, we juggled our schedule a little bit to  
11 try to satisfy some travel plans. So with no objection from  
12 the Court, we would like to go with Dr. Coale, then Dr. Myoda.

13 THE COURT: Very well.

14 MR. MCDANIEL: May we proceed?

15 THE COURT: You may.

16 MR. MCDANIEL: Defendants call Dr. Frank Coale.

17 FRANK J. COALE

18 Called as a witness on behalf of the defendants, being first  
19 duly sworn, testified as follows:

20 THE COURT: Would you state your full name for the  
21 record, please.

22 THE WITNESS: My name is Frank J. Coale.

23 THE COURT: Thank you. Mr. McDaniel, you may inquire.

24 MR. MCDANIEL: Thank you, Your Honor. And just as I  
25 did with Dr. Jaffe, I'd like to address the exhibits we'll use

1 commonly referred to as poultry litter?

2 A. Yes.

3 Q. To what extent has your research and study dealt with the  
4 management of poultry litter?

5 A. I work with it quite a bit.

6 Q. The area where you conducted most of your research, is  
7 that known as the Delmarva area?

8 A. I've done a lot of work on the Delmarva Peninsula which is  
9 the coastal plain of Maryland, Virginia and Delaware.

10 Q. Is there significant poultry production in that region?

11 A. Yes, very large poultry production area.

12 Q. In that area is poultry litter used for fertilization of  
13 crops or pasture?

14 A. Yes, it is.

15 Q. Dr. Coale, does -- in your opinion, does poultry litter  
16 have beneficial uses in agriculture?

17 A. Yes, it does.

18 Q. Do we have a demonstrative exhibit to illustrate that  
19 point? Show D 80, please. Tell us what Demonstrative 80 is,  
20 Dr. Coale.

21 A. This demonstrative on the screen is a list of the nutrient  
22 and soil amending properties of poultry litter.

23 Q. Now, the Court has heard multiple times discussions about  
24 the macronutrients in poultry litter, so I don't think we need  
25 to cover that again. Can you please explain briefly these

1 secondary nutrients, the micronutrients that are listed here?

2 A. Okay. The secondary nutrients are calcium, magnesium,  
3 sulfur. They are nutrients that are essential for plants to  
4 have access to, enable for them to grow and be productive. But  
5 they're not utilized or needed in as large of quantity as the  
6 macronutrients, that being nitrogen, phosphorus and potassium,  
7 but nonetheless they are essential.

8 Q. Does that apply to the micronutrients?

9 A. Exactly. Micronutrients is the same story. They're  
10 categorized in these broad categories simply by how large a  
11 quantity they are needed by the plant. So these are essential  
12 nutrients, just needed in smaller quantities.

13 Q. Would you briefly identify for the record the  
14 micronutrients in poultry litter?

15 A. Iron, boron, magnesium, zinc, copper, molybdenum, chlorine  
16 and sodium.

17 Q. You said magnesium.

18 A. Manganese. Excuse me, I misspoke if I said that.

19 Q. Thank you. You have a column over here that says soil  
20 amending properties. Dr. Coale, does poultry litter qualify as  
21 a soil amendment or soil conditioner?

22 A. Yes, it does.

23 Q. And would you identify for the Court what are the  
24 properties commonly associated with poultry litter that can  
25 amend or condition soil?

1 A. Well, if we worked on that list, increasing soil pH which  
2 is the same as neutralizing soil acidity. That's the same  
3 process you'd achieve by adding agricultural limestone to a  
4 soil, neutralizing soil acidity. Adding organic matter to the  
5 soil and improve soil tilth which is the workability or the  
6 structure, if you will, of the soil. As you increase organic  
7 matter, you improve the water retention capacity of the soil  
8 and promote microbial activity. It promotes aggregation of  
9 soil particles, that's simply how the soil particles stick  
10 together in larger units which is a positive characteristic.  
11 That characteristic promotes water infiltration. It promotes  
12 macrofauna, as it says on the list. Those are like earthworms  
13 and other larger animals that live in the soil. And porosity  
14 which we spoke about earlier today, it helps improve porosity  
15 of the soil.

16 Q. All right. Dr. Coale, if forage on a pasture does not  
17 need any of the fertilizer nutrients in litter that are  
18 identified on the left-hand side of this exhibit, does --  
19 excuse me, can poultry litter use improve the soil by virtue of  
20 these conditioning properties listed on the right-hand side of  
21 the exhibit?

22 A. Yes, they can.

23 Q. Is it necessary for poultry litter to be tilled into the  
24 soil in order for the soil to receive these beneficial changes  
25 from litter?

1 A. No, it's not.

2 Q. Dr. Coale, are you familiar with grazing and haying  
3 pasture systems such as those that are present in the Illinois  
4 River Watershed?

5 A. Yes.

6 Q. What are the primary crops in this type of system?

7 A. Bermuda grass, tall fescue.

8 Q. Is the land application of poultry litter beneficial to  
9 these pasture systems?

10 A. Yes, it is.

11 Q. Why?

12 A. Well, the primary benefit derived from poultry litter  
13 application and what benefits the farmer in operating the  
14 system is the nitrogen supplying capacity of the poultry  
15 litter. Supplying nitrogen to the crop, which is probably the  
16 element in most high demand by the crop, can be achieved from  
17 poultry litter being applied to the pasture.

18 Q. In his opening statement, Mr. Ryan acknowledged that some  
19 of the poultry operators have had poultry litter applied to  
20 their pastures that are in excess of 65 STP. Dr. Coale, even  
21 if the soil is at 65 soil test phosphorus, can poultry litter  
22 still provide a benefit to the soil and the forage?

23 A. I assume we're talking about 65 STP as from the Oklahoma  
24 full testing laboratory?

25 Q. Yes, OSU standard 65 STP.



1 A. Okay. I just want to make sure we've got the same number,  
2 okay.

3 Q. So even if the soil is at OSU 65 STP, can poultry litter  
4 still provide a benefit to the soil and the forage?

5 A. Yes, it can.

6 Q. Is there a point at which the application of poultry  
7 litter will actually do harm to the soil or harm to the forage?

8 A. Under application rates commonly used, not that I'm aware  
9 of.

10 Q. Now, plaintiffs have offered the proposition in this  
11 hearing that land applying poultry litter on soils of 65 STP or  
12 higher is not agricultural use, but is mere waste disposal.

13 Dr. Coale, does 65 STP define the line between agricultural use  
14 of poultry litter and waste disposal?

15 A. I do not believe it does because it's only focusing on one  
16 very small component, that would be the phosphorus component of  
17 litter.

18 Q. Has the USDA Natural Resources Conservation Service  
19 developed criteria for nutrient management?

20 A. Yes, they have.

21 Q. Is that what we call the Code 590?

22 A. Yes.

23 Q. Can you identify what the objectives are for the Code 590?

24 A. The Code 590 is designed to provide guidance for  
25 application of nutrients to agricultural land, to assure that

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel, )  
W.A. DREW EDMONDSON, in his )  
capacity as ATTORNEY GENERAL )  
OF THE STATE OF OKLAHOMA, )  
et al. )  
Plaintiffs, )  
V. ) No. 05-CV-329-GKF-SAJ  
TYSON FOODS, INC., et al., )  
Defendants. )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MARCH 11, 2008

PRELIMINARY INJUNCTION HEARING

VOLUME VIII

BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

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## WITNESSES CALLED ON BEHALF OF DEFENDANTS:

CHARLES BRYCE ANDREWS

Direct Examination by Mr. McDaniel ..... 1948

1 A. I do disagree with their conclusions --

2 MS. WARD: Thank you.

3 A. For the reasons I outlined in my declaration.

4 MS. WARD: Thank you.

5 THE COURT: Let's take a recess.

6 MR. MCDANIEL: Your Honor, there will be no redirect.

7 THE COURT: Very well, you may be excused at this  
8 point, sir. Thank you very much.

9 THE WITNESS: Thank you.

10 (Recess.)

11 THE COURT: Be seated please. Mr. Elrod.

12 MR. ELROD: Your Honor, we call Mr. John Littlefield  
13 by deposition. His testimony will be 18.36.599 seconds in  
14 length. And Mr. Littlefield is in the courtroom today and I  
15 understand he will be quote, cross-examined, end quote, live.

16 MR. BULLOCK: A brief cross-examination live, Your  
17 Honor.

18 THE COURT: Very well, 18 point some seconds; right?

19 MR. BULLOCK: I think we can beat that record.

20 MR. ELROD: It's 18.36.599 minutes.

21 THE COURT: You may proceed.

22 MR. BULLOCK: I want to get my five minutes back.

23 (Excepts of the videotaped deposition of John  
24 Littlefield were played as follows:)

25 DIRECT EXAMINATION

1 \* \* \* \* \*

2 Q. "What are your job duties?

3 A. "Well, I'm a poultry inspector for those counties. I  
4 don't know if I said Mayes County or not in that awhile ago."

5 \* \* \* \* \*

6 Q. "How many growers are in the counties you work?

7 A. "I -- I think I have about 210. 205, 210.

8 Q. "Of that number, how many have in place phosphorus based  
9 animal waste plans?"

10 \* \* \* \* \*

11 A. "To the best of my recollection, they all do. They either  
12 have a plan or they have a letter from the NRCS office stating  
13 that they will work them up a plan. So they do have something  
14 current in their file."

15 \* \* \* \* \*

16 Q. "Do you get to know these people pretty well?

17 A. "Yes, sir, I do.

18 Q. "And for the most part are they cooperative with you?

19 A. "Yes, sir, they are.

20 Q. "Courteous?

21 A. "Yes, sir.

22 Q. "Have you had any problems with any hostility at any time  
23 ever?

24 A. "Starting out, you know, it was a change and farmers are  
25 pretty conservative and independent people.

1 Q. "Yes, sir."

2 \* \* \* \* \*

3 Q. "Any bad actors out there?"

4 A. "You know, not many now, no. I can't -- I really don't  
5 have one."

6 \* \* \* \* \*

7 Q. "How many commercial applicators do you have operating in  
8 your region?"

9 A. "I have 150, I imagine. Commercial?"

10 Q. "Yes, sir."

11 A. "No, that's a total of private and commercial.  
12 Commercial, probably 30. I don't know, approximately 20 or 30."

13 Q. "Let me ask you about those 20 or 30 and how they operate,  
14 if you know. Would it be more true that those people buy  
15 litter and then resell litter and apply it as part of the  
16 reselling process or do they simply act as the middleman and  
17 transfer litter from one place to another? That was a very bad  
18 question but --"

19 A. "No, I understand it. I think I understand it. In most  
20 cases, I think, they buy the litter, get the litter from the  
21 grower and they transport it, and sell it, and spread it."

22 Q. "Okay. So in most cases the commercial applicators are  
23 buying and selling litter, buying it and reselling it?"

24 A. "That's true, I think."

25 \* \* \* \* \*

1 precise, but I'd like to know whether it's 10 percent, or 50  
2 percent or 90 percent.

3 A. "I -- it's pretty high, 70 percent or so, probably.

4 Q. "Okay.

5 A. "Maybe higher than that."

6 \* \* \* \* \*

7 Q. "Do you think that based on your last nine years of  
8 experience in the northeast Oklahoma, that most of the growers  
9 are taking a responsible approach towards litter management?"

10 \* \* \* \* \*

11 A. "Excuse me, ma'am. I think -- I think so. I think more  
12 so now than they were early on, but yes, I think so.

13 Q. "Do you know of any growers in your area who you believe  
14 have a malicious intent to harm the waters of the state of  
15 Oklahoma?

16 A. "No, sir, I do not."

17 \* \* \* \* \*

18 Q. "And these are the acts under which you operate?

19 A. "Yes, sir.

20 Q. "Look at 10-9.3. It should be the third page. It is true  
21 that under the act in the ODAFF regs that one cannot construct  
22 a poultry house in Oklahoma without first seeking to have it  
23 registered with the Department of Agricultural?

24 A. "Yes, sir.

25 Q. "So it would be true that if the Department of Agriculture



1 spreading of poultry waste?

2 A. "None.

3 Q. "I'll ask you the same question as it relates to George's.  
4 Have they given you any instructions or recommendations with  
5 regard to spreading poultry waste?

6 A. "No. Just follow the regulations, rules and regulations."

7 MS. LONGWELL: The deposition Jim Lance Pigeon, dated  
8 May 25th, 2007.

9 THE COURT: Will there be any counterdesignations with  
10 respect to any of these?

11 MS. LONGWELL: They are included in, Your Honor.

12 MR. BULLOCK: Yes, Your Honor, we have already made  
13 counterdesignations and they are reading those.

14 THE COURT: Okay. Good, thank you.

15 MR. HAMMONS: I'd also, I would like to point out,  
16 Your Honor. Did you read 26, 16 through 19. I believe there's  
17 one that you missed.

18 MS. LONGWELL: Which ones?

19 MR. HAMMONS: It's the counterdesignation for Joel  
20 Reed. Excuse me. Disregard.

21 MS. LONGWELL: Okay.

22 THE CLERK: Did you say Higgins?

23 MS. LONGWELL: Pigeon. Jim Lance Pigeon.

24 Your Honor, page 46, line 8.

25 Q. "Does poultry waste produced from your barns ever go off

1 your property?

2 A. "Go off?

3 Q. "Does it leave your property?

4 A. "Yes, it does.

5 Q. "And when it does is it because you have sold it or given  
6 it away; which?

7 A. "It's because I've sold it."

8 MS. LONGWELL: Page 52, line 1.

9 Q. "Generally speaking who has the day-to-day operation or  
10 control of would your facility?

11 "MR. BOND: Object to form.

12 A. "Myself.

13 Q. "And has that changed at any time during the time you  
14 started until the time of today?

15 A. "No, it has not."

16 MS. LONGWELL: Page 54, line 10.

17 Q. "Do the birds that Tyson delivers, are they owned by you  
18 or Tyson?

19 "MR. WILLIAMS: Object to form.

20 A. "I believe the birds are owned by the integrator."

21 THE COURT: For the record the two proceeding  
22 objections are overruled.

23 MS. LONGWELL: Do you want me to pause, Your Honor, as  
24 we go through these when I hit an objection?

25 THE COURT: Well, to the extent that the objection is

1 THE COURT: "Any of your growing operation records."  
2 Overruled.

3 A. "In my opinion I don't feel that they have the right to  
4 inspect those records as long as I'm following what's required  
5 of the law."

6 MS. LONGWELL: Page 174, line 15.

7 Q. "Let me try to clarify that. You own the poultry barns  
8 that are on that farm?

9 A. "Yes.

10 Q. "You own the equipment that you use on that farm?

11 A. "Yes.

12 Q. "And is there a house on that farm?

13 A. "Yes.

14 Q. "Do you own that house?

15 A. "Yes."

16 MS. LONGWELL: Page 175 line 13.

17 Q. "Okay. I'm assuming that you generate an electricity bill  
18 from poultry operation?

19 A. "Yes.

20 Q. "Who pays that electricity bill?

21 A. "I do.

22 Q. "And I think you testified before that you don't have any  
23 employees that work on your farm?

24 A. "That's correct.

25 Q. "Okay. Have you ever had any employees work on your farm?

1 A. "I have had on very few occasions.

2 Q. "Okay. And on those occasions did you hire that person to  
3 work on your farm?

4 A. "Yes.

5 Q. "Okay. So did you pay that person?

6 A. "Yes, I did.

7 Q. "Does Tyson offer you any benefits like health care and a  
8 profit sharing plan, all that kind of stuff?

9 A. "No.

10 Q. "Do they have withhold any FICA or social security from  
11 the check you get when your flock is sold?

12 A. "No.

13 Q. "You don't get paid by the hour do you?

14 A. "No.

15 Q. "From Tyson? Let me clarify that.

16 A. "No.

17 Q. "You're not paid a salary from Tyson, are you?

18 A. "No."

19 MS. LONGWELL: Page 178, line 6.

20 Q. "Does Tyson tell you when to cake-out your houses?

21 A. "No, they do not.

22 Q. "Does Tyson tell you when to clean out your houses?

23 A. "No, they do not.

24 Q. "Does Tyson tell you where to land apply poultry litter?

25 A. "No, they do not."

1 MS. LONGWELL: Page 182, line 17. And it's the second  
2 sentence.

3 Q. "What I'm asking is when you were contracting with  
4 Peterson Farms to grow chickens for Peterson Farms you were  
5 ultimately responsible for the production on your farm?

6 A. "Yes.

7 "MR. GARREN: Object to the form as leading."

8 THE COURT: Sustained.

9 Q. "When you were growing for Peterson, did Petersen ever  
10 tell you when or how to clean out your house, your houses?

11 A. "No, they did not.

12 Q. "Did they tell you when to apply your litter?

13 A. "No, they did not.

14 Q. "Or where to apply your litter?

15 A. "No.

16 Q. "Did they instruct you to sell your litter?

17 A. "No.

18 Q. "Did they instruct you you could not sell your litter?

19 A. "No."

20 MS. LONGWELL: The deposition of Steve Butler on April  
21 26, 2007. Page 78, line 16.

22 Q. "All right. When you took over these complexes, did you  
23 in fact sell 100 percent of all the litter or waste that's  
24 produced from the barns from the 16 complexes?

25 A. Yes."

1 MS. LONGWELL: Page 82, line 13.

2 Q. "And you put it in there because it absorbs the moisture  
3 from the urine and excrement that the birds excrete?

4 A. "That's correct.

5 Q. "So at some point in time it gets mixed together into a  
6 combination of bedding material and the waste excreted from the  
7 birds; correct?

8 A. "That would be correct."

9 MS. LONGWELL: Page 86, line 20.

10 Q. "All right, so that I'm clear. Have you ever given waste  
11 away to somebody who land applied it on any of your land?

12 A. "Green Country Farms does not.

13 Q. "So all of the complexes that you operate at Green Country  
14 since you have operated it from February of '04, there has been  
15 no land application to any of those properties; is that  
16 correct?

17 A. "To the best of my knowledge, no.

18 Q. "I mean land application meaning poultry waste land  
19 application, not commercial fertilizer?

20 A. "Right.

21 Q. "You did give one comment about one guy might have used --

22 A. "And I'm not real clear on that. He asked permission. I  
23 told him he could use commercial but not litter."

24 MS. LONGWELL: Page 104, line 18.

25 Q. "Did you make any proposals or suggestions to Tyson that

1 A. "Yes.

2 Q. "And what was the reason for that?

3 A. "Well, I thought it was very unique when I got there to  
4 see that many chicken houses and sage grass and worthless hay  
5 growing everywhere and then as I got to doing my due diligence,  
6 found out that Hudson never spread, Tyson never spread, and I  
7 didn't want to start. I'm talking with Adair County right now,  
8 though, about possibly going into a Bermuda deal."

9 MS. LONGWELL: Page 237, line 24.

10 Q. "Do you consider yourself a businessman, sir?

11 A. "I do.

12 Q. "And Green Country Farms is your business; is that right?

13 A. "That is my business.

14 Q. "How many employees does that business support?

15 A. "Approximately 45.

16 Q. "And you are responsible for paying the wages of those  
17 employees?

18 A. "Yes, I am.

19 Q. "I assume that business, like many other businesses, has  
20 debt associated with it; is that fair?

21 A. "Very much so.

22 Q. "And you and not Tyson are responsible for paying that  
23 debt; correct?

24 A. "That's correct."

25 MS. LONGWELL: The deposition of Larry McGarrah, dated

1       them.

2               Now, with respect to mechanics. My understanding is  
3 I've got tomorrow morning loaded up; right? So I'm starting at  
4 1:30. I don't believe the I have anything else; right?

5               THE CLERK: We start at 1:30.

6               THE COURT: Generally, General, my approach is take as  
7 much time as you dare. You know, people ask me on arguments to  
8 a jury, opening statements to a jury. You know, take as much  
9 time as you dare with that jury. At a certain point -- you  
10 know, I've got plenty of work stacked up here, but keep me  
11 interested. As I say, if I'm wrong in focusing, and I know  
12 there are many more issues there, but for one reason or another  
13 those two issues have piqued my curiosity. And help me out  
14 here because I think everyone needs to go through the process  
15 of whether or not the plaintiffs have to show every aspect here  
16 to get what they are asking for. I don't know how much more  
17 guidance I can give you.

18              MR. EDMONDSON: With those directions, Your Honor, we  
19 would anticipate then starting with a half an hour and then  
20 letting the defense respond an then close with a half an hour.

21              THE COURT: That would be great. That would be great.

22              MS. LONGWELL: Are you ready, Your Honor?

23              THE COURT: I am.

24              MS. LONGWELL: Deposition of Larry McGarrah, dated  
25 June 27th, 2006. Page 56, line 7?



1 Q. "How did you decide to go into the poultry growing  
2 business?

3 A. "Source of income. Just decided we needed the income and  
4 we needed the fertilizer."

5 MS. LONGWELL: Page 58, line 8.

6 Q. "Well, was it your choice to keep all the poultry waste  
7 generated from poultry barn?

8 A. "Yes."

9 MS. LONGWELL: Page 58, line 15.

10 Q. "In your contracts with Tyson have you ever negotiated  
11 that you would keep or not keep the waste from your poultry  
12 operation?

13 A. "No."

14 Q. "Have they at any time indicated they didn't want to you  
15 keep the poultry waste?

16 "MR. BOND: Object to form."

17 THE COURT: Overruled.

18 A. "No."

19 MS. LONGWELL: Page 61 line 4.

20 Q. "All right. SO have you ever attempted to put your litter  
21 in that, I'm calling it a broker arrangement, where you can  
22 sell it?

23 A. "No."

24 Q. "It's been your intention to use it at all times on your  
25 land?

1 A. "Yes."

2 MS. LONGWELL: Page 99, line 23.

3 Q. "Does the type of deal then give you any instructions on  
4 how or where to apply poultry waste?"

5 A. "No."

6 MS. LONGWELL: Page 100, line 1.

7 Q. "Has he ever in the past discussed with you how or where  
8 you should apply poultry waste on your facility?"

9 A. "No."

10 MS. LONGWELL: Page 128, line 3.

11 Q. "Do the service techs ever come in prior to a flock going  
12 in to see that it's properly prepared and to accept a flock?"

13 A. "Yes."

14 Q. "So they do that every time?"

15 A. "Yes."

16 Q. "And for every barn?"

17 A. "Yes."

18 MS. LONGWELL: Page 152, line 4.

19 Q. "Who supplies the -- who supplies the feed for your  
20 poultry birds when you have them?"

21 A. "Tyson."

22 MS. LONGWELL: Page 167, line 19:

23 Q. "The cost for soil and waste analysis tests, do you pay  
24 for those?"

25 A. "Yes."

1 A. "Well, I had to put in a water meter and a power failure  
2 alarm.

3 Q. "You had to add that in order to get three-year contract  
4 this time?

5 A. "Yes. And my houses had to be tight enough they could  
6 pull as much wind speed through them and they had passed.

7 Q. "And who tested your house for that are purpose?

8 A. "The field men.

9 Q. "Okay. And so once these three things were confirmed,  
10 that made you eligible then for this three-year contract?

11 A. "Yes."

12 MS. LONGWELL: The deposition W.A. Saunders, volume  
13 one, dated October 23rd, 2006. Page 29, line 3.

14 Q. "What facts or reasons did you have for going into the  
15 poultry growing operation business?

16 A. "To try and make any cow operation work better.

17 Q. "And how do you mean by that?

18 A. "By the fertilizer.

19 Q. "And tell me what --

20 A. "Poultry litter. I bought a piece of farmland that was  
21 very poor, had been cleared, then left to go back to seed, had  
22 never been taken care of. Fertility on it was little to none  
23 and I was either going to have to put a tremendous amount of  
24 commercial litter on it, commercial fertilizer or poultry  
25 litter. With the number of acres I had, I could not afford the

1 commercial. Plus, I was working out and trying to support a  
2 cow farm, and the chicken farm gave me a chance to stay at home  
3 and make a living and improve my cow farm?

4 Q. "So you bought it in order to have the waste from the  
5 poultry farm?

6 A. "As well as income from poultry farm, sure."

7 MS. LONGWELL: Page 43, line 8.

8 Q. "Who is considered to be in charge of the day-to-day  
9 operation of the poultry growing portion of your business?

10 A. "I am."

11 MS. LONGWELL: Page 49, line 4.

12 Q. "All right. We talked earlier about -- I think you  
13 referred to him earlier as a field rep or a field supervisor?

14 A. "Field man.

15 Q. "I want to use your term so we know who we're talking  
16 about.

17 A. "He's the field man.

18 Q. "And tell me what is it that field man does as it relates  
19 to you?

20 A. "He'll come in, check the feed bins for quantity. He'll  
21 check around the house to make sure good housekeeping is kept,  
22 brush is kept down. He'll look inside the houses to check  
23 mortality, current mortality, what we keep on the records.  
24 He'll look at our controller to see what environment is like.

25 Q. "A controller, what do you mean by that?

1 Q. "What efforts or actions does the integrator take in  
2 monitoring or assisting you obtaining soil samples?

3 A. "None.

4 MR. MCDANIEL: Object to the form."

5 THE COURT: Overruled.

6 Q. "Does Peterson or its representatives assist or monitor  
7 you in taking waste samples, poultry waste samples?

8 A. "No."

9 MS. LONGWELL: Page 178, line 16.

10 Q. "Talking about your residence, sir, what is the water  
11 supply that you use for your personal use at the residence?

12 A. "A spring."

13 MS. LONGWELL: Volume two of the deposition of W.A.  
14 Saunders, dated October 27, 2006. Page 236, line 21.

15 Q. "Who owns the live chickens that you raise?

16 A. "Mr. Peterson.

17 Q. "The company?

18 A. "Yes."

19 MS. LONGWELL: The deposition Juana Loftin, dated June  
20 22nd, 2006. Page 93, line 14.

21 Q. "By the way, what are you are you paid for the litter  
22 waste from your operation?

23 "MR. WILLIAMS: Object to the form."

24 THE COURT: Overruled.

25 A. "What do you mean?

1 Q. "The litter which is taken out of your barn, is to be  
2 applied, what do you get made for that?

3 A. "Sometimes it's \$11. It varies. Sometimes it's \$11 a  
4 truck, sometimes it's \$15, sometimes it's \$20.

5 Q. "What does Mr. Wofford pay you?

6 A. "That much. It varies. Sometimes it's \$11, sometimes  
7 \$15, sometimes \$20.

8 Q. "How do you negotiate that with him?

9 A. "Well, if I'm in a big hurry to get those houses cleaned,  
10 and like in July when I clean, you know, last year it was  
11 getting late, it was late in the year and I couldn't get  
12 anybody to take it, so he said he would take it. And I mean he  
13 arranged to get somebody to clean my houses and I think he paid  
14 me \$15 a load."

15 MS. LONGWELL: Page 97, line 6.

16 Q. "(By Mr. Bullock) How often does -- is it Mr. Wells from  
17 the Simmons service tech? How often does though Mr. Wells to  
18 the your operation?

19 A. "Well, once a week and sometimes he comes more than once a  
20 week. Could be two times or three times or sometimes just once  
21 a week.

22 Q. "How much time will he spend there when he comes?

23 A. "Lots of tie.

24 Q. "What types of things does he do while he's there?

25 A. "Different things. He checks everything, my water